

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 5, 2000

D030285 Hamilton et al. v. City of Brawley et al.

Upon written request filed by appellant City of Brawley (erroneously also served as Brawley Police Department), the appeal of City of Brawley (Brawley Police Department) only is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)).

D032228 National Parks and Conservation Association et al. v. County of Riverside et al.

The court's September 4, 1998 attorney fees order is reversed. Association is not entitled to recover attorney fees for services performed after the Return EIR was filed (September 1997). On remand, the court should exercise its discretion to determine whether the approximately \$13,902 in attorney fees incurred before Riverside filed its Return EIR may be recovered under section 1021.5.

CERTIFIED FOR PUBLICATION. Haller, J.; We Concur: Kremer, P.J., McIntyre, J.

D034207 Johnson v. Schuster

The judgment is affirmed. Respondent is entitled to costs on appeal. McDonald, J.;
We Concur: Huffman, Acting P.J., Haller, J.

Court convened at 10 a.m.

Present: The Honorable Don Work, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and Terry O'Rourke
Deputy Clerk: D. E. Moore

D034821) In re Frankie L., a Juvenile

D034765) In re Frankie L., a Juvenile

D035538 In re Creda on Habeas Corpus

Causes called on merits. Julie E. Braden, Esq. argued for appellant, Daniel C. M. Elizabeth Handy, Esq. argued for appellant, Carmen L. Patrice Plattner Grainger, Deputy County Counsel argued for respondent. Linda Fabian, Esq. argued for the minor. Ms. Braden replied for appellant. Cause submitted as to the consolidated cases ONLY.

Court adjourned at 10:50 a.m.

D032176 People v. Maas

The petition for rehearing is denied.

D035468 Aceves v. Superior Court of San Diego County/People

The petition is denied.

D035701 McCoy v. Superior Court of San Diego County/People

The petition is denied.

D035634 Aceves v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 5, 2000 (continued)

D032862 People v. Flores
The petition for rehearing is denied.

D035352 In re Treadwell on Habeas Corpus
The petition is denied.

D031575 Mencoza et al. v. Club Car, Inc.
The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Nares, J.;
We Concur: Kremer, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

June 6, 2000

D032530 People v. Wakefield

The judgment is affirmed. Kremer, P.J.; We Concur: Nares, J., McIntyre, J.

D034639 In re Robyn P., a Juvenile

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., Nares, J.

D035664 Elliott v Superior Court of the County of San Diego/Augustine Company

The order denying the petition for writ of mandate became final as to this court on May 31, 2000, immediately upon filing. This court no longer retains jurisdiction to modify the decision or otherwise entertain the requests contained in the declaration filed by petitioner on June 1, 2000. (See Cal. Rules of Court, rule 24(a).)

D030163 People v. Bonner

The opinion filed May 9, 2000, is modified. As modified, the petition for rehearing is denied. There is no change in judgment.

D034474 In re Brandon P. et al., Juveniles

D034898 In re Vernon P. on Habeas Corpus

(Consolidated) The judgment as to Darlean is reversed and the matter is remanded to the trial court for a new selection and implementation hearing after Darlean is properly noticed. The judgment as to Vernon is affirmed and his petition for writ of habeas corpus is denied. McDonald, J.; We Concur: Kremer, P.J., Work, J.

D034003 Julian Country Estates v. Tellam

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)).

D032053 People v. Klinger

D033388 In re Klinger on Habeas Corpus

The pending petition for writ of habeas corpus, *In re James Patrick Klinger*, D033388, is consolidated with pending appeal, *People v. Klinger*, D032053, for disposition.

D032053 People v. Klinger

D033388 In re Klinger on Habeas Corpus

(Consolidated.) Let a writ of habeas corpus issue. The judgment is reversed and the matter is remanded to the posture in effect after Klinger entered the guilty plea on October 2, 1997. The trial court shall determine whether to follow the initial plea agreement unless the People within 30 days elect to try Klinger and resume plea bargain negotiations. If the initial plea agreement is approved, Klinger's sentence shall be modified to comply with the agreement. If the trial court rejects the initial plea bargain, the parties shall be restored to their status before the plea bargain was entered. The appeal is dismissed as moot. The Clerk of the Court of Appeal is directed to forward a copy of this opinion to the California State Bar. Huffman, J.; We Concur: Kremer, P.J., Work, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 6, 2000 (Continued)

D035327 In re Twine on Habeas Corpus

The petition is denied.

D032095 Nationwide Mutual Insurance Company v. Argonaut Insurance Company

The trial court's finding allocating defense costs equally between Argonaut and Nationwide is affirmed. The judgment, and the trial court's finding allocating indemnification costs equally between Argonaut and Nationwide, are reversed. The matter is remanded to the superior court, which is directed to enter a new judgment allocating all the indemnification costs to Argonaut and allocating one-half of the defense costs each to Argonaut and Nationwide, respectively. Nationwide is awarded its costs of appeal. McIntyre, J.; We Concur: Work, Acting P.J., Benke, J.

D034879 People v. Lewis

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D034606 City of Oceanside et al. v. San Diego County Superior Court/MacDonald

Let a peremptory writ of mandate issue directing the superior court to vacate its order denying petitioners' motion for summary judgment, enter a new order granting the motion and enter judgment for petitioners. Petitioners are entitled to costs. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: Benke, Acting P.J., Haller, J.

D031575 Mendoza et al. v. Club Car, Inc.

The court on its own motion grants rehearing in the above matter.

D031575 Mendoza et al. v. Club Car, Inc.

The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Nares, J.; We Concur: Kremer, P.J., Huffman, J.

D032557 Harper-Smith v. Wells Fargo Bank et al.

The judgment is affirmed. Wells Fargo and Home Savings are awarded costs. Nares, J.; We Concur: Work, Acting P.J., Haller, J.

D033118 Lopez v. Frank & Sons Paving, Inc. et al.

The judgment is reversed and the original jury verdict is ordered reinstated. Costs awarded to Lopez as the prevailing party. Kremer, P.J.; We Concur: Benke, J., Haller, J.

D033687 Kassab v. San Diego State University et al.

The order denying the motion for relief pursuant to Code of Civil Procedure section 473 and the summary judgment are affirmed. Kremer, P.J.; We Concur: Nares, J., O'Rourke, J.

D033058 People v. Stuart

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

June 6, 2000 (Continued)

D032302 People v. Fitch

The order directing Fitch to pay restitution of \$17,075 is vacated. The court's alternative order imposing a restitution fine of \$10,000 is reduced to \$6,640. The trial court is directed to amend the abstract of judgment accordingly and also to correct references to the various subdivisions of former Government Code section 13967 as indicated in this opinion. (*see fn. 5, ante.*) The trial court shall forward a copy of the amended abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D035172 In re Victoria S., a Juvenile

The appeal is dismissed. O'Rourke, J.; We Concur: Work, Acting P.J., McIntyre, J.

D032972 Maryland Casualty Company et al. v. Nationwide Mutual Insurance Company

D033116 National Union Fire Insurance Company of Pittsburgh Pennsylvania et al. v.

Nationwide Mutual Insurance Company

(Consolidated) The judgment is reversed. On remand, the trial court shall apply the equitable contribution doctrine and reallocate the defense costs among the parties in accordance with the insurance contracts and equitable principles. Nationwide is entitled to costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 7, 2000

D035201 Omari v. State of California Department of Corrections et al.

Generally the denial of a motion for reconsideration is not appealable. Even if the time were extended under California Rules of Court, rule 3, the notice of appeal is untimely because the motion was denied by operation of law on January 11, 2000. The appeal is dismissed.

D034004 Lawson v. City of Oceanside

The judgment is affirmed. Lawson is to pay City's cost on appeal. Huffman, J.;
We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 8, 2000

D033281 People v. Cruz

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Nares, J.

D032187 Bolouki v. Regents of the University of California

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Huffman J.

D031354 People v. Shaheed

The petition for rehearing is denied.

D034993 Hornung v. San Diego County Superior Court/Zych et al.

Let a writ of mandate issue directing the Superior Court of the County of San Diego to vacate the portion of its order of January 7, 2000 denying the motions to quash the subpoenas of Commissioners Bentley and Giaquinto and to issue an order quashing those subpoenas. The stay issued by this court on February 8, 2000 is vacated. O'Rourke, J.;
We Concur: Benke, Acting P.J., McIntyre, J.

D032704 Bernier et al v. Elcotel, Inc. et al.

The judgments are affirmed. Kremer, P.J.; We Concur: Huffman, J., Nares, J.

D030163 People v. Bonner

The informal petition for rehearing is denied.

D034199 People v. Gutierrez

The judgment is affirmed. Huffman, J.; We Concur: Work, Acting P.J., Haller, J.

D033396 People v. Gordon

The request for judicial notice filed May 8, 2000 is granted. The appeal is dismissed as moot.

**D035731 RJW Corporation v. Jay Stroh as Director of the Department of Alcoholic
Beverage Control and Alcoholic Beverage Control Appeals Board**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 9, 2000

D033592 In re Marriage of Lasher and Theofanous-Lasher

The judgment is affirmed. Lasher is to recover costs.

D033670 People v. Clark

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D035600 LaGuardia v. Tamura

The Notice of Appeal filed on April 18, 2000, in the Superior Court was forwarded to this court and assigned an appellate court number in error. The appeal is to the Appellate Department of the Superior Court. The appeal is dismissed as to this Court and transferred to the Superior Court.

D035666 Baumer v. San Diego County Superior Court/People

Let a writ of mandate issue directing the superior court to vacate its order of May 9, 2000, striking Baumer's statement of disqualification and enter an order consistent with this opinion. The stay issued on June 1, 2000 is vacated. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 24(d).) Work, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D034496 In re Brent E., a Juvenile

The order is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D035164 People v. Lopez

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)).

D033257 In re Juan C., a Juvenile

The judgment is affirmed as modified. Kremer, P.J.; We Concur: Work, J., Huffman, J.

D033954 In re Richard W., a Juvenile

The juvenile court shall modify its records to reflect deletion of the gang condition; in all other respects the order is affirmed as modified. Kremer P.J.; We Concur: Work, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 9, 2000 (Continued)

D032314 Tubbs v. Price et al.

The modified judgment is further modified to insert a provision in its paragraph 3, as shown in the capitalized language below: "A constructive trust in favor of plaintiff is imposed on all property in which James E. Price owns a legal or beneficial interest THAT HAS BEEN DERIVED FROM WRONGFULLY APPROPRIATED FUNDS until the accounting on the subject property is complete, plaintiff has been made whole, and this judgment has been paid." The superior court is directed to issue a new judgment to reflect this appellate disposition and modification. As so modified, the judgment is affirmed. Costs are awarded to respondent Tubbs.

D035693 In re Aceves on Habeas Corpus

The petition is denied.

D035386 In re Gonzalez on Habeas Corpus

The petition is denied without prejudice to refile after consideration by the superior court.

D035505 In re MacLean on Habeas Corpus

The petition is denied as incomplete.

D034682 Ward v. State of California Department of Corrections

Pursuant to California Rules of Court, rule 10(c), the appeal filed November 16, 1999, is dismissed for failure of appellant to timely deposit costs for preparing the record on appeal. (Cal. Rules of Court, rules 4(c) and 5(c)).

D035384 In re Childs on Habeas Corpus

The petition is denied.